

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

Implementation of the Satellite Home
Viewer Improvement Act

MM Docket No. 00-2 /

Application of Network Nonduplication,
Syndicated Exclusivity, and Sports
Blackout Rules to Satellite Transmissions
of Superstations

**OPPOSITION
OF THE
MOTION PICTURE ASSOCIATION OF AMERICA, INC.**

In this proceeding, the Commission has implemented new satellite network nonduplication, syndicated exclusivity and sports blackout rules, as required by the Satellite Home Viewer Improvement Act of 1999 ("SHVIA").¹ The Motion Picture Association of America, Inc. ("MPAA"), applauds the Commission's faithfulness to the statutory mandate. Indeed, MPAA shares the Commission's view that "Protecting parties' rights to engage in contract negotiations with the knowledge that exclusive

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agreements would not be abrogated by importation of distant signals” is “fundamental” whether cable systems or satellite carriers retransmit distant broadcast signals.²

Once more, however, EchoStar seeks to delay and evade the obligations placed on it by the new rules. And MPAA must object. EchoStar has asked the Commission to reconsider its decision to provide a 120-day transition period, under which a satellite carrier would have twice the normal 60-day period to implement program deletions where exclusivity notices are received prior to June 1, 2001. Instead, EchoStar reiterates its request for a one year transition period, claiming that 120 days “likely will be insufficient to permit EchoStar to adequately assess the burden from the rules, evaluate whether to continue providing its superstation package in light of that burden, and, if so, consider how best to comply with deletion requests.”³

The Commission must reject EchoStar’s familiar ploy. EchoStar has had more than enough time to determine how to comply with the new rules. Yet EchoStar now acts as if like Rip Van Winkle it has awakened to a vastly changed landscape. However, EchoStar hardly confronts some startling new obligation to protect exclusive program rights – adopted while it dozed through extended consideration of the exclusivity provisions in Congress, to say nothing of another year’s consideration of the new rules by the Commission. Of course, in reality, has known for years that

¹ 47 U.S.C. §339(b).

² *Report and Order*, CS Docket no. 00-2, FCC 00-388 (released November 2, 2000) [hereinafter cited as *Report and Order*].

exclusivity rules were under active consideration in Congress and has known now for over a year since the statute was enacted almost precisely what those rules would be. Therefore, EchoStar has had ample time to anticipate, ascertain, and resolve any genuine difficulties it might encounter in implementing the new rules. Indeed, even now, over three months remain before the first possible deletion might be required on May 10, 2001.⁴

That the Commission declined to adopt EchoStar's "national standard for deletion," offers EchoStar no excuse.⁵ Such a proposal was no more than wishful thinking.⁶ The statute contemplated no such broad exception from the rules. As the Commission stated:

With respect to syndicated programming, the superstations are large market stations, which typically acquire the most popular syndicated programming that is sold in the vast majority of markets, making EchoStar's fear of a crazy quilt pattern of deletions largely unfounded.⁷ Moreover, the statute unambiguously requires that we apply the exclusivity rules in these situations. Adopting EchoStar's proposal to limit application of the rules to the non-existent circumstance in which the broadcaster's geographic zone would cover most of the nation effectively eliminates the application of the exclusivity rules. The statutory language does not give us this choice.⁸

If anything, EchoStar's "national standard" reveals that EchoStar had given considerable thought to how its system might be configured to comply with the rules.

³ Petition for Reconsideration, CS Docket No. 00-2, filed December 14, 2000, by EchoStar Satellite Corporation at 3-5[hereinafter cited as "EchoStar Petition"].

⁴ *Report and Order* at ¶49, n.185.

⁵ EchoStar Petition at 2.

⁶ Even EchoStar seeks no reconsideration of this portion of the Commission's decision.

In no way, therefore, does the Commission's spurning EchoStar's proposal provide a sound rationale for further delay in implementation of the rules.

Furthermore, throughout the process EchoStar argued forcefully to Congress and the Commission that exclusivity rules would be overly burdensome. Presumably, in order to make such arguments in good faith, it must have assessed in considerable detail the means of complying with the rules and the rules' implications for its marketing of superstations. Therefore, its claim today that another year is needed to permit it to "adequately assess the burden from the rules" lacks credibility.⁹

Additionally, EchoStar's proposal is no less than an oblique attack on the rule itself. First, as the Commission rightly recognized:

In addition, we do not believe that EchoStar's one-year proposal would serve its stated purpose of enabling satellite carriers to review deletion notices and plan a year in advance before the implementing the deletions. We believe rights holders would not bother to submit deletion requests knowing that they will not be acted upon for a year.¹⁰

Indeed, many stations may be unable to provide notices that far in advance because their program schedules are not finalized a year in advance. Rights holders, who enjoy only a one-year window of protection, could lose the bulk of their protection over the remainder of this year. And the Commission has acknowledged they have the "greatest need and incentive to protect their rights".¹¹ Second, additional delay in

⁷ *Id.*

⁸ *Report and Order* at ¶26.

⁹ EchoStar Petition at 2.

¹⁰ *Report and Order* at ¶48.


¹¹ *Report and Order* at ¶43.

implementation of the rules would eliminate exclusivity protection in the fall of this year, when television stations often debut new programming and revised schedules. Thus, EchoStar's proposal would undermine the rule with a markedly deleterious effect on the program distribution market.

Finally, Congress in the statute mandated that the rules become effective within one year of SHVIA's enactment. Already the Commission has stretched the implementation date with the 120-day notice period. Already the first deletions pursuant to notices submitted before June 1, 2001 are put off an additional 60 days. Further delay would assault too boldly the statutory requirement for an effective date of November 29, 2000.

MPAA, therefore, opposes EchoStar's renewed request for a one-year transition period and urges the Commission to deny EchoStar's Petition for Reconsideration.

Respectfully submitted,



James J. Popham, Esq.
Vice President and Statutory License Counsel
Motion Picture Association of America, Inc.
1600 Eye Street, N.W.
Washington, D.C. 20006
(202) 293-1966/(202) 785-3026 (facsimile)

January 27, 2001

CERTIFICATE OF SERVICE

I, Jo P. Popham, hereby certify that I have caused copies of the foregoing "Opposition of the Motion Picture Association of America, Inc." to be sent via By-Hand delivery, this 27th day of January, 2001, to the following:

Magalie Roman-Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

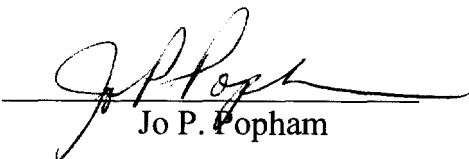
Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Pantelis Michaelopoulos
Rhonda Rivens Bolton
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for EchoStar Satellite Corporation


Jo P. Popham